

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240)-777-6700

Case No. S-420-F

PETITION OF HOLY CROSS HOSPITAL OF SILVER SPRING, INC.

OPINION OF THE BOARD

(Hearing held Wednesday, April 3, 2002)
(Effective date of Opinion: May 8, 2002)

Case No. S-420-F is a petition by Holy Cross Hospital of Silver Spring, Inc. ("Holy Cross") for a modification to an existing special exception for a hospital pursuant to Section 59-G-2.24 of the Zoning Ordinance. This modification proposes to (1) construct a minor extension to the existing service building at the rear of the Hospital, and (2) temporarily relocate the magnetic resonance imaging ("MRI") trailer to the rear of the Hospital.

Pursuant to Section 59-A-4.11(a) of the Montgomery County Zoning Ordinance, the Board of Appeals held a public hearing on the application of April 3, 2002. Robert G. Brewer, Jr., Esquire, appeared on behalf of the Petitioner. Mr. Brewer called Cornelius McKelvey, Senior Vice President of Holy Cross as a witness.

There were no members of the public present at the hearing, and no letters of opposition were submitted.

The subject property is Parcel B, located at 1500 Forest Glen Road, Silver Spring, Maryland, in the R-60 Zone.

Decision of the Board:

Special Exception Modification
Granted, Subject to Conditions
Enumerated Below.

EVIDENCE PRESENTED TO THE BOARD

1. The applicant plans to make certain modifications to the existing special exception which will add approximately 611 square feet to the service building at the rear of the Hospital and will cause the temporary loss of 24 existing parking spaces. These modifications include (i) the slight expansion of the Hospital's existing service building, located at the back of the Hospital, and (ii) the temporary relocation of the MRI trailer to the back of the Hospital. Both of these modifications are required in preparation for certain construction and renovations to the Hospital as approved pursuant to Case No. S-420-E (the "Approved Construction").

2. Mr. McKelvey, Senior Vice President of Holy Cross, testified regarding the need for an expanded service building to house the major electrical and mechanical equipment used to support the building systems of the Hospital and those expected in connection with the Approved Construction. The two-story service building, located at the rear of the Hospital,

was constructed in 1963. A minor renovation and enlargement occurred in the late 1970's, but the service building has not been renovated or updated since then [Exhibit 3B]. The additional square footage requested by the Hospital is necessary to effectuate the patient care goals of the Hospital while ensuring safe and reliable power capacity [Exhibit 3B].

Mr. McKelvey pointed out pursuant to Exhibit 4(b) that the existing service building, and the requested build out, is located behind the Hospital and out of the view of the Hospital's neighbors. The enlargement will have no effect on existing fire lanes or surface parking. The additional construction will push the west wall of the building (which measures approximately 74 feet in length) out by approximately 8¼ feet [Exhibit 3B and Exhibit 4B]. Additionally, the additional noise resulting from the modest increase in size is expected to be minimal.

3. Mr. McKelvey also testified regarding the requested temporary relocation of the MRI trailer. Currently the trailer is located on a 1,276 square foot concrete pad on the east side of the Hospital building. The temporary relocation is necessary to begin the Approved Construction located on the east side of the Hospital building. Pursuant to Exhibit 4C, Mr. McKelvey pointed out the requested temporary location at the rear of the Hospital. The requested location will encompass 1,118 square feet of surface space. The temporary relocation is expected to last for approximately one year, at which time the MRI will be moved into the ER/Physicians Specialist Wing, part of the Approved Construction. Although the temporary relocation will cause the loss of 24 parking spaces, the opening of the new parking structure on the southwest portion of the property will ensure that no parking shortage occurs due to the loss of the spaces [Exhibit 3(b)].

FINDINGS OF THE BOARD

The proposed modifications comply with the specific standards and requirements set forth for the proposed modified use in Section 59-G-2.31, specifically:

Section 59-G-2.31. Hospitals.

A hospital or sanitarium building may be allowed, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or number of patients or persons being cared for; that such use will not affect adversely the present character or future development of the surrounding residential community; and if the lot, parcel or tract of land on which the buildings to be used by such institution are located conforms to the following minimum requirements; except, that in the G-2 and C-O zones, the minimum area and frontage requirements shall not apply:

The proposed modifications are to an existing and approved hospital special exception use, are consistent with the Sector Plan, and enhance the use within the immediate community. Further, the proposed modifications do not add any beds to the hospital and there is no adverse traffic impact.

- (1) **Minimum area.** Total area, 5 acres.
- (2) **Minimum frontage.** Frontage, 200 feet
- (3) **Setback.** No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family detached residential or is used solely for single-family detached residences, and in all other cases not less than 50 feet from a lot line.
- (4) **Off-street parking.** Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the

surrounding uses and a maximum of safety, convenience and amenity for the residents of neighboring areas. Parking shall be limited to a minimum in the front yard. Subject to prior board approval, a hospital may charge a reasonable fee for the use of off-street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.

- (5) **Commission recommendation.** The board or applicant shall request a recommendation from the commission with respect to a site plan, submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off street parking and green area.
- (6) **Building height limit.** Building height limit, 145 feet.

The proposed modified use meets all additional minimum requirements of Section 59-G-2.31. This includes, but is not limited to, minimum area, frontage, off-street parking, setbacks, Planning Board recommendation and building height limits.

- (7) **Prerequisite.** A resolution by the health services planning board approving the establishment of the hospital shall be filed with the petition for a special exception.

Not applicable.

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds that there are no non-inherent adverse resulting from the modification.

59-G-1.21. General Conditions.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone;*

The property is zoned R-60, which permits a hospital by special exception and thus the proposed modifications are a permissible special exception in the zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed modifications comply with the specific standards for hospitals set forth in 59-G-2.31.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted

master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The proposed modifications are consistent with the General Plan for the physical development of Montgomery County. The 1996 Forest Glen Sector Plan specifically provides for the continuation of a hospital use on this site, and provides for the hospital to make modifications to meet changing health care needs flexibility for the hospital to make modifications to meet changing health care needs of the community. The proposed modification expansion of the Hospital is limited to the existing campus, consistent with the Sector Plan.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The proposed modifications will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses. The proposed modifications and additions to the existing hospital will blend with the existing design, scale and bulk of the existing structure and will not distract from the present appearance of the hospital. The construction will occur along the I-495 Beltway, as will the temporary relocation of the MRI trailer.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere In the zone.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere In the zone.

The proposed modifications will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity. No adverse impact will occur as a result of the proposed modifications, nor will the proposed construction be detrimental to the use and enjoyment of surrounding properties in any respect. In addition, there has been no detrimental effect on the economic value of surrounding homes from the operation of the Hospital.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.

When the proposed modifications are evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, the proposed modifications do not increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Further, the proposed modifications to the special exception use as a hospital are in accordance with the recommendations of the Forest Glen Sector Plan.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere In the zone.

The proposed modifications do not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, irrespective of adverse effects the use might have if established elsewhere In the zone.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The Board concludes that the proposed modifications will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. There is existing telephone, electric, natural gas, water and sanitary sewer services adjacent to and available to serve the Hospital and the proposed modifications. Other public services and utilities are also available to the site, including police and fire services. The Board notes that adequate public services have served this site for many years and the modifications will not require additional services.

Accordingly, the Board grants the special exception for the proposed modifications, which include the extension of the service building and the temporary relocation of the MRI trailer, subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, the testimony of its witnesses, and representations of its attorneys, to the extent that such evidence and representations are identified in the Board's opinion granting the modification.
2. All terms and conditions of the existing approved special exception remain in full force and effect.
3. The approval of the proposed modifications is limited to the extension of the service building and the temporary relocation of the MRI trailer. Any further expansions will require a separate approved modification to the special exception.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, Vice Chairman, with Angelo M. Caputo, Louise L. Mayer, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of May, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.